REMARKS

This Amendment is submitted in reply to the non-final Office Action mailed on April 5, 2007. A petition for a one month extension of time is submitted herewith. The Director is authorized to charge $120.00 for the petition for extension of time and any additional fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 112701-586 on the account statement.

Claims 1-5, 7-16 and 28 are pending in this application and stand rejected. Of the rejected Claims, only Claim 1 is independent. Claim 6 was previously canceled and Claims 17-27 were previously withdrawn. In the Office Action, Claims 4 and 5 are objected to, Claims 1-5, 7-16 and 28 are rejected under 35 U.S.C. §112 second paragraph and Claims 1-5, 7-16 and 28 are rejected under 35 U.S.C. §103. In response, Claims 1, 4 and 7 have been amended. The amendment does not add new matter. In view of the amendment and/or for the reasons set forth below, Applicants respectfully submit that the rejections are improper and should be withdrawn.

In the Office Action, Claims 4 and 5 are objected to. In response, Applicants have amended Claim 4 to address the informalities cited by the Patent Office. Accordingly, the objections to Claims 4 and 5 are rendered moot.

In the Office Action, Claims 1-5, 7-16 and 28 are rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Specifically, the Patent Office alleges that it is unclear as to (1) what size of the stabilizing agent would be sufficiently small, (2) what portion of water is frozen or unfrozen in the composition, and (3) what range of glucose polymers is claimed. See, Office Action, all of page 3. In response, Claims 1 and 7 have been amended to clarify allegedly indefinite phrases. Based on at least these noted reasons, Applicants believe that Claims 1 and 7 and Claims 2-5, 8-16 and 28 that depend therefrom fully comply with 35 U.S.C. §112, second paragraph.

Accordingly, Applicants respectfully request that the rejection under 35 U.S.C. §112 second paragraph be withdrawn.

In the Office Action, Claims 1-5, 7, 9-16 and 28 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,084,295 to Whelan et al. ("*Whelan*") in view of U.S. Patent No. 3,128,193 to Hilker (*"Hilker"*). Claim 8 is rejected under 35 U.S.C. §103(a) as being

unpatentable over *Whelan* in view of *Hilker* further in view of U.S. Patent No. 4,452,824 to Cole ("*Cole*"). In the alternative, Claims 1-5, 9-14, 16 and 28 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,427,701 to Morley ("*Morley*") in view of *Cole*. Applicants believe these rejections are improper and respectfully traverse them for at least the reasons set forth below.

As amended, independent Claim 1 recites, in part, a sweetening agent mixture comprising glucose polymers and glucose, the glucose polymers comprising polymers of n molecules of glucose, wherein n is an integer between 2 and 10, inclusive, and the glucose representing from 30 to 40% of the weight of the sweetening agent mixture. Applicants have amended independent Claim 1 to recite the elements of dependent Claim 7. For example, it is possible to advantageously use, as glucose polymers, the polymer fraction, which exists in a glucose syrup containing from 30 to 40% by weight of glucose. See, specification, page 6, lines 8-11. Applicants have observed that, if the percentage of glucose increases in the composition, the frozen dessert obtained is more malleable. See, specification, page 6, lines 16-17. In contrast, Applicants respectfully submit that the cited references are deficient with respect to the present claims.

Whelan and *Hilker* fail to disclose or suggest a sweetening agent mixture comprising glucose polymers and glucose where the glucose represents from 30 to 40% of the weight of the sweetening agent mixture as required, in part, by independent Claim 1. In fact, *Whelan* fails to disclose any specific proportion of glucose and glucose polymers in the sweetening mixture. The Patent Office admits the same. See, Office Action, page 5, lines 28-29. *Hilker* discloses about 40% (or 8/20) to about 43% (or 7.5/17.5) corn syrup solids or glucose in a sweetening mixture, but *Hilker* fails to disclose the glucose polymers (e.g. sucrose) comprising polymers of n molecules of glucose, wherein n is an integer between 2 and 10, inclusive. See, *Hilker*, col. 3, lines 54-58 and col. 4, lines 26-29. Instead, *Hilker* teaches sucrose, or a disaccharide including a first unit of glucose and a second unit of fructose. In other words, sucrose does not involve n molecules of glucose where n is between 2 and 10. For at least the reasons discussed above, even if combinable, the cited references do not teach, suggest, or even disclose all of the elements of Claim 1 and Claims 2-5, 7, 9-16 and 28 that depend therefrom, and thus, fail to render the claimed subject matter obvious.

The Patent Office asserts that the surprising sweetening and texturizing effects of the sweetening mixture and sweetening mixture's unique compensation of reduction of fat are not recited in the rejected claims. See, Office Action, page 10, lines 18-22. However, Applicants respectfully submit that this is not the issue. Surprising results can be used to rebut a *prima facie* case of obviousness; they do not need to be recited in the claims. See, MPEP § 2144.05. Applicants respectfully submit that the recited ranges as claimed in independent Claim 1 achieve unexpected results relative to the prior art range. In this regard, Applicants respectfully submit these surprising results to rebut a *prima facie* case of obviousness for at least the reasons as set forth below.

Applicants have surprisingly found that it is possible to reduce the proportion of fat in a frozen dessert without limiting the malleability of the dessert at the freezing temperature, for example, by using the sweetening agent mixture of glucose polymers and glucose at the levels as claimed. See, specification, page 5, lines 19-25. Moreover, Applicants observed that the presence, in the proportions as claimed, of these glucose polymers can make it possible to avoid or reduce the greasy taste of the frozen dessert without reducing the dessert's spoonable character and its capacity to be distributed by the nozzle of a pressurized container at the freezing temperatures. See, specification, page 5, lines 25-30. Consequently, besides any sweetening effects realized by the sweetening agent mixture, numerous textural effects were surprisingly discovered that go beyond the "sweetness effects" argued as obvious by the Patent Office.

Furthermore, because the sweetening agents mixture can comprise from 10 to 50% of glucose polymers, it is possible to not only compensate for the reduction of the quantity of fat to be used in the composition of the frozen dessert according to the present invention, but also allow a modification of the nature of the fat. See, specification, page 5, line 31 to page 6, line 1. Indeed, it becomes possible to use, for example, as a mixture with fat having an onset of solidification temperature less than 0°C, a certain proportion of fat having an onset of solidification temperature between 0 and 40 °C, which provides greater flexibility in the taste of the frozen dessert according to the invention. See, specification, page 7, line 26 to page 8, line 3. Therefore, it becomes possible to use whole milk as a source of proteins, for example, and no longer only skimmed milk as was the case in previously known frozen desserts because the fat in the milk can now partially replace the fat having an onset of solidification temperature of less than 0 °C. See, specification, page 8, lines 3-9.

In addition, it is possible to advantageously use, as glucose polymers, the polymer fraction, which exists in a glucose syrup containing from 30 to 40% by weight of glucose. See, specification, page 6, lines 8-11. Applicants have observed that, if the percentage of glucose increases in the composition, the frozen dessert obtained is more malleable. See, specification, page 6, lines 16-17.

Applicants respectfully submit that *Whelan* or *Hilker* fails to disclose or even recognize the advantages, benefits and/or properties of a frozen dessert composition comprising a sweetening agent mixture comprising glucose polymers and glucose, with the glucose polymers representing from 10 to 50% of the weight of the sweetening agent mixture and the glucose representing from 30 to 40% of the weight of the sweetening agent mixture in accordance with the present claims. Furthermore, the recited ranges requiring (i) the glucose polymers to represent from 10 to 50% of the weight of the sweetening agent mixture and (ii) the glucose to represent from 30 to 40% of the weight of the sweetening agent mixture, as claimed in independent Claim 1 achieve unexpected results relative to the prior art range.

Accordingly, Applicants respectfully request that the obviousness rejection with respect to Claims 1-5, 7, 9-16 and 28 over *Whelan* and *Hilker* be reconsidered and the rejection be withdrawn.

In the Office Action, Claim 8 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Whelan* and *Hilker* in view of *Cole*. However, Applicants respectfully submit that the patentability of Claim 1 as previously discussed renders moot the obviousness rejection of Claim 8 that depends therefrom. In this regard, the cited art fails to teach or suggest all of the elements of Claim 8 in combination with the novel elements of Claim 1.

Accordingly, Applicants respectfully request that the obviousness rejection with respect to Claim 8 over *Whelan* and *Hilker* in view of *Cole* be reconsidered and the rejection be withdrawn.

In the Office Action, Claim 1 is rejected under 35 U.S.C. §103(a) in the alternative as being unpatentable over *Morley* in view of *Cole*. Applicants believe this rejection is improper and even if combinable, *Morley* and *Cole* now fail to disclose every element of independent Claim 1 as amended.

Morley and *Cole* fail to disclose or suggest every element of independent Claim 1. For example, *Morley* and *Cole* fail to disclose or suggest the glucose polymers comprising polymers

of n molecules of glucose, wherein n is an integer between 2 and 10, inclusive as required, in part, by independent Claim 1. *Morley* and *Cole* also fail to disclose or suggest the glucose polymers representing from 10 to 50% of the weight of the sweetening agent mixture as required, in part, by independent Claim 1. Finally, *Morley* and *Cole* fail to disclose or suggest the glucose representing from 30 to 40% of the weight of the sweetening agent mixture as required, in part, by independent Claim 1.

Morley and *Cole* disclose sucrose and dextrose as suitable sugars. See, *Morley*, col. 6, lines 33-47; *Cole*, col. 2, lines 51-64. As discussed above, sucrose is not a glucose polymer comprising polymers of n molecules of glucose, wherein n is an integer between 2 and 10, inclusive. Furthermore, the Patent Office admits that *Morley* in view of *Cole* fails to disclose the specific proportion of glucose and glucose polymers in a sweetening mixture as claimed. See, Office Action, page 10, lines 10-11. In addition, *Morley* and *Cole* now fail to disclose or suggest the glucose representing from 30 to 40% of the weight of the sweetening agent mixture as required, in part, by independent Claim 1 as amended. For at least the reasons discussed above, Applicants respectfully submit that the combination of *Morley* and *Cole* is improper. Moreover, even if combinable, the cited references do not teach, suggest, or even disclose all the elements of independent Claim 1 and Claims 2-5, 9-11 and 16 that depend therefrom, and thus, fail to render the claimed subject matter obvious.

Accordingly, Applicants respectfully request that the obviousness rejection with respect to Claims 1-5, 9-14, 16 and 28 over *Morley* and *Cole* be reconsidered and the rejection be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

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